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| 10/054,448 | 01/18/2002 | Philip M. Lungo | LUNGO-US | 5296 |

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| EXAMINER |
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LUONG, SHIAN TINH NHAN

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| ART UNIT | PAPER NUMBER |
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3728

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DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,448

Applicant(s)

Lungo

Examiner

Shian T Luong

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

Response to Amendment

1. The amendment filed on 1/26/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: elongated adjacent pockets having outer and inner side edges connected in fixed relation to the skirt.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The specification is objected to under 35 U.S.C. 112, first paragraph, and 37 C.F.R.

1.71(a) and (b) as failing to provide an adequate written description of the invention, and failing to adequately teach how to make and/or use the invention. The specification does not disclose attaching the pockets to the skirt by both outer and inner side edges of each pocket. Clarification is required and no new matter is permitted.

4. Claims 16 and 18-19 are rejected under 35 U.S.C. 112, first paragraph, for the reasons set forth in the objection to the specification.

5. Claims 16 and 18-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. In claim 16, the pockets are attached to the skirt by its end edge and do not appear to engage the skirt on both outer and inner side edges. Also, the phrase “a generally upwardly facing surface” on line 10 appears to claim the same surface as the upper surface of the open top. On lines 16,17, 19,20, the phrase “an absence of structure therebetween to establish a first downwardly opening slot extending upwardly therebetween when viewed from a side direction” and the phrase “an absence of structure therebetween to establish a second downwardly opening slot extending upwardly therebetween when viewed from said first direction” are awkward and indefinite. The slots appear to extend downwardly when viewed from a side direction or a first direction. .

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong.

Armstrong discloses a tool carrier adapted for resting on the top of a stepladder. The tool carrier comprising a generally rectangular top panel and a skirt 12. The front panel 14 is planar on its surface. Even though the front panel has an opening, the surface surrounding the opening is still planar. A plurality of tool receiving pockets 42,40,36 is carried on the skirt. A handle 20 is connected above the top panel.

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8. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaona et al. (Des. 380,276). Gaona et al. discloses a tool carrier adapted for resting on the top of a stepladder. The tool carrier comprising a generally rectangular top panel and a skirt. The front and back panel are planar on its surface. A plurality of tool receiving pockets is carried on the skirt. A handle is connected above the top panel.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3, 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstong in view of Reynolds. Armstong fails to disclose an elastic member in the cover. However, Reynolds teaches the use of an elastic member 310 to connect two separate panels 320,322 together. It would have been obvious in view of Reynolds to provide an elastic member between the panels of Armstong to allow the cover to stretch over a larger size ladder if necessary. In other words, the elastic member allows the user to stretch the edges along panels 14,16 so the straps can still be secure to the stepladder in a safe and tight manner.

11. Claims 4-5 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Markson. Armstrong lacks a frame structure as recited in claims 4-5. However, Markson teaches a display device with an internal frame 20 to support an outer cover. The internal frame is attached to the cover panels. It would have been obvious in view of

Markson to provide an internal frame in the carrier of Armstrong to provide a stronger and durable carrier. Even though the material of Armstrong is supposed to withstand the gravitational forces it normally encounters when loaded with tools, the device is positioned on the ladder, not on a flat horizontal surface. Without the frame members, heavier tools can still compromise the pockets while the bottom of the device is positioned on a horizontal surface.

12. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 6, further in view of Markson. Armstrong lacks a frame structure as recited in claims 4-5. However, Markson teaches a display device with an internal frame 20 to support an outer cover. It would have been obvious in view of Markson to provide an internal frame in the carrier of Armstrong to provide a stronger and durable carrier.

13. Claims 3, 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaona et al in view of Reynolds. Gaona et al. fails to disclose an elastic member in the cover. However, Reynolds teaches the use of an elastic member 310 to connect two separate panels 320,322 together. It would have been obvious in view of Reynolds to provide an elastic member between the panels of Gaona et al. to allow the cover to stretch over a larger size ladder if necessary.

14. Claims 4-5 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaona et al. in view of Markson. Gaona et al. lacks a frame structure as recited in claims 4-5. However, Markson teaches a display device with an internal frame 20 to support an outer cover. The internal frame is attached to the cover panels. It would have been obvious in view of Markson to provide an internal frame in the carrier of Armstrong to provide a stronger and durable carrier. Even though the material of Armstrong is supposed to withstand the gravitational forces it normally encounters when loaded with tools, the device is positioned on

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the ladder, not on a flat horizontal surface. Without the frame members, heavier tools can still compromise the pockets while the bottom of the device is positioned on a horizontal surface.

15. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 6, further in view of Markson. Gaona et al. lacks a frame structure as recited in claims 4-5. However, Markson teaches a display device with an internal frame 20 to support an outer cover. It would have been obvious in view of Markson to provide an internal frame in the carrier of Gaona et al. to provide a stronger and durable carrier.

16. Claims 16 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briault (Des. 365,232). Briault discloses a body having a top, a bottom and vertically extending walls to form a cavity. Two vertical elongated legs having upper portion, a center portion and bottom portion. The upper portion is connected to the body while the bottoms of the legs have free ends. The center portions and the free ends spaced outwardly in a first direction from the body to form an opening when viewed from the side of the holder. A second opening is formed between the vertical legs. Although Briault does not disclose tubular shaped container, it would have been obvious to provide any of a variety of shape and size to accommodate the intended articles.

17. Claims 16 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briault (Des. 365,232) in view of Florian (4,049,187) or Spykerman (US 5,219,140). Briault discloses a body having a top, a bottom and vertically extending walls to form a cavity. Two vertical elongated legs having upper portion, a center portion and bottom portion. The upper portion is connected to the body while the bottoms of the legs have free ends. The center portions and the free ends spaced outwardly in a first direction from the body to form an opening

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when viewed from the side of the holder. A second opening is formed between the vertical legs. Although Briault does not disclose tubular shaped container, Spykerman or Florian are cited to show the tubular container with the extending legs.

Allowable Subject Matter

18. Claims 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

19. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648.**

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

For applicant's convenience, the formal FAX number is (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify

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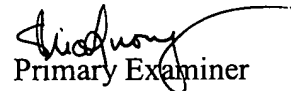
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Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL
February 19, 2004


Primary Examiner
Shian Luong
Art Unit 3728